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S. Parrish and another, to secure the custody of the complainant's infant son, James S. Parrish, Jr. From a judgment dividing the custody of the child as between the petitioner and defendants, petitioner brings error. Modified and affirmed.

P. H. C. Cabell and *A. L. Holladay*, both of Richmond, and *J. H. Corbitt*, of Suffolk, for plaintiff in error.

C. V. Meredith, of Richmond, and *E. E. Holland*, *R. H. Rawles*, and *W. M. Crumpler*, all of Suffolk, for defendants in error.

CHARLES SYER & CO. *v.* LESTER.

June 11, 1914.

[82 S. E. 122.]

1. Sales (§ 52*)—Requisites and Validity of Contract—Sale Distinguished from Consignment for Sale.—Whether the relation between parties, who had made a contract whereby one was to take orders from wholesale dealers for lemons on a commission basis, in respect to 125 boxes, ordered shipped to the broker himself, in a letter with other orders to ship to wholesale dealers, was that of seller and buyer or principal and broker was to be determined, not from the letter alone, but from all the circumstances.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 118-144, 1047; Dec. Dig. § 52.* 12 Va.-W. Va. Enc. Dig. 6.]

2. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance.—The buyer of 125 boxes of lemons, upon discovering that the lemons were short in count and deficient in quality, ought either to have rejected the shipment as a whole or accepted it under protest and sued for his damages, and he had no right to sell part on his own account in pursuance of an offer to deduct 40 cents per box, and reject the remainder.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dec. Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

3. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance.—Where defendant, who was taking orders for lemons on commission, ordered 125 boxes shipped to himself, and plaintiff offered to deduct 40 cents per box because of deficiency as to quantity and quality, the sale of 33 boxes by defendant at the reduced price was an implied acknowledgment that their relation was that of seller and buyer, and a tacit acceptance of the compromise.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dec. Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

4. Customs and Usages (§ 12*)—Delivery of Goods—Acceptance of Part.—A usage or custom of the trade in a certain city, permitting a buyer to accept part of a shipment and reject part, was properly excluded, where the seller had no actual knowledge thereof, and it was not so well established, notorious, and generally accepted that notice thereof would be imputed to him.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. §§ 23, 24; Dec. Dig. § 12.* 12 Va.-W. Va. Enc. Dig. 26, 37.]

5. Customs and Usages (§ 17*)—Delivery of Goods—Acceptance of Part.—A usage or custom of the trade in a certain city, permitting a buyer to accept part of a shipment and reject part, was properly excluded as an attempt, under the guise of explaining the language of the contract, to ingraft upon it a new provision upon which to base a substantial defense, which is not permissible, at least when the custom is not pleaded.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. § 34; Dec. Dig. § 17.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

6. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance—Customs and Usages.—A usage or custom of the trade in a certain city, permitting a buyer to accept part of a shipment and reject part, was properly excluded, because in contravention of the general rule of law that acceptance and appropriation of part of a shipment of goods implies an agreement for the acceptance of the whole.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

7. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance.—The acceptance and appropriation by the buyer of a part of a shipment of 125 boxes of lemons imported a contract to accept them all.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dec. Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 27.]

Error to Circuit Court of City of Norfolk.

Action by Frank H. Lester against Charles Syer, trading as Charles Syer & Co. Judgment for plaintiff, and defendant brings error. Affirmed.

Jeffries, Wolcott, Wolcott & Lankford, of Norfolk, for plaintiff in error.

Hugh W. Davis, of Norfolk, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.